

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NEW YORK STATE VEGETABLE
GROWERS ASSOCIATION INC., *et al.*,

Plaintiffs,

v.

19-CV-1720-LJV-MJR
DECISION & ORDER

GOVERNOR ANDREW CUOMO, *et al.*,

Defendants.

On December 30, 2019, the plaintiffs, the New York State Vegetable Growers Association, Inc., and the Northeast Dairy Producers Association, Inc., commenced this action challenging the constitutionality of the Farm Laborers Fair Labor Practices Act, 2019 N.Y. Sess. Laws ch. 105.¹ Docket Item 1. After the plaintiffs filed a second amended complaint, Docket Item 35, on October 30, 2020, the defendants moved to dismiss the second amended complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Docket Item 36. On November 30, 2020, the plaintiffs responded, Docket Item 37, and on December 14, 2020, the defendants replied, Docket Item 38.

On January 12, 2021, this Court referred the matter to United States Magistrate Judge Michael J. Roemer for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 39. After Judge Roemer heard oral argument on the motion to dismiss,

¹ That same day, the plaintiffs also filed an *ex parte* motion for a temporary restraining order (“TRO”) and preliminary injunction. Docket Item 2. The Court partially granted the TRO, which was to remain in effect only until a hearing on the plaintiffs’ motion. Docket Item 7. A hearing was held on July 10, 2020, Docket Item 30, after which the Court lifted the TRO, denied the plaintiffs’ motion for a preliminary injunction, and allowed the plaintiffs to move to amend the complaint, Docket Item 31.

both parties submitted supplemental briefing, Docket Items 44, 45, and supplemental letters, Docket Items 46, 47.

On May 28, 2021, Judge Roemer issued a Report and Recommendation (“R&R”), finding that the defendants’ motion to dismiss should be granted because the plaintiffs’ claims were not ripe for judicial review. Docket Item 48. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must review *de novo* those portions of a magistrate judge’s recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Roemer’s R&R as well as the parties’ submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Roemer’s recommendation to grant the defendants’ motion to dismiss.

For the reasons stated above and in the R&R, the defendants’ motion to dismiss, Docket Item 36, is GRANTED; the second amended complaint, Docket Item 35, is dismissed without prejudice; and the Clerk of the Court shall close the file.

SO ORDERED.

Dated: June 28, 2021
Buffalo, New York

/s/ Lawrence J. Vilardo

LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE